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THOMAS JOSEPH BARNES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THOMAS JOSEPH BARNES,) Case No.
Plaintiff,) COMPLAINT FOR DAMAGES
v.)
CITY AND COUNTY OF SAN) JURY TRIAL DEMANDED
FRANCISCO, a municipal entity,)
SAN FRANCISCO POLICE)
DEPARTMENT, POLICE OFFICER)
JOSHUA T. PHILLIPS, POLICE)
OFFICER ROYER, POLICE)
OFFICER TERRITO, POLICE)
OFFICER WOOD and DOES 1-100,)
Jointly and Severally,)
Defendants.)

Plaintiff THOMAS JOSEPH BARNES, by and through his attorneys, the HELBRAUN LAW FIRM, for his Complaint against Defendants, states as follows:

I. INTRODUCTION

1. On February 23, 2007, Plaintiff Barnes was talking with an African American stranger near 31 Turk Street in San Francisco, California, when four City and County of San Francisco Police Department Officers approached the other man and began to question him. None of the officers directed any words or actions to Mr. Barnes at that point, so Mr. Barnes reasonably believed he was not the subject of the inquiry, and began to walk away. When he had walked about a foot or so, one officer, believed to be Defendant Police Officer Phillips, grabbed Mr. Barnes, slammed him against a wall, and performed some type of maneuver on Mr. Barnes' hand or wrist or arm that resulted in breaking Mr. Barnes' arm. Plaintiff Barnes was wrongfully

1 arrested and injured.

2 **II. JURISDICTION**

3 2. This action is brought pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 12133 and
4 the statutory and common law of the State of California. Jurisdiction is based upon 28 U.S.C. §
5 1343 and 29 U.S.C. §§ 794 and 706(8)(B), and the Court's pendent jurisdiction over the state
6 claims.

7 **III. PARTIES**

8 3. Plaintiff Thomas Joseph Barnes was at all material times a resident of the
9 City and County of San Francisco, State of California.

10 4. Defendant City and County of San Francisco is a municipal corporation
11 established by the laws and Constitution of the State of California, and owns, operates, manages,
12 directs and controls the San Francisco Police Department which employs other defendants in this
13 action. _____

14 5. Defendants Police Officers Phillips, Royer, Territo, and Wood were and are
15 at all material times employed as law enforcement officers by Defendant City and County of San
16 Francisco, and were acting within the course and scope of their employment.

17 6. The true names and capacities of Defendants sued herein as DOES 1-100
18 ("Doe defendants") are unknown to Plaintiff, who therefore sues said Defendants by such
19 fictitious names, and Plaintiff will seek leave to amend this complaint to show their true names
20 and capacities when the same are ascertained. At all material times, each Doe defendant was an
21 employee or agent of Defendant City and County of San Francisco acting within the course and
22 scope of that employment.

23 7. Plaintiff is informed and believes and thereon alleges that each of the
24 Defendants sued herein was negligently, wrongfully and otherwise responsible in some manner
25 for the events and happenings as hereinafter described, and proximately caused injuries and
26 damages to Plaintiff. Further, one or more Doe defendants were at all material times responsible
27 for the hiring, training, supervision, and discipline of other defendants, and/or directly responsible
28 for violations of Plaintiff's rights.

1 8. Each individual defendant (meaning non-municipal defendants) is sued in
2 his individual and official capacities.

3 9. Plaintiff is informed and believes, and based upon such information and
4 belief alleges, that each of the defendants was at all material times an agent, servant, employee,
5 partner, joint venturer, co-conspirator, and/or alter ego of the remaining defendants, and in doing
6 the things herein alleged, was acting within the course and scope of that relationship. Plaintiff is
7 further informed and believes, and thereon alleges, that each of the defendants herein gave
8 consent, aid and assistance to each of the remaining defendants, and ratified and/or authorized the
9 acts or omissions of each defendant as alleged herein, except as may be hereinafter otherwise
10 alleged.

11 10. At all material times, each defendant was jointly engaged in tortious
12 activity, resulting in the deprivation of Plaintiff's Constitutional rights and other harm.

13 11. At all material times, each defendant acted under the color of the laws,
14 statutes, ordinances and regulations of the State of California, and pursuant to the actual customs,
15 policies, practices and procedures of the governmental entity by which they were employed or
16 retained.

IV. STATEMENT OF FACTS

18 12. On February 23, 2007, Plaintiff Barnes was talking with an African
19 American stranger near 31 Turk Street in San Francisco, California, when four City and County of
20 San Francisco Police Department Officers approached the other man and began to question him.
21 None of the officers directed any words or actions to Mr. Barnes at that point, so Mr. Barnes
22 reasonably believed he was not the subject of the inquiry, and began to walk away. When he had
23 walked about a foot or so, one officer, believed to be Defendant Police Officer Phillips, grabbed
24 Mr. Barnes, slammed him against a wall, and performed some type of maneuver on Mr. Barnes'
25 hand or wrist or arm that resulted in breaking Mr. Barnes' arm. Plaintiff Barnes was wrongfully
26 arrested and injured. The charges against Plaintiff were later dismissed.

27 13. At all material times, Plaintiff acted peacefully and lawfully, never
28 threatened any person, and never interfered with any police officer.

1 14. The conduct herein alleged of Defendants Police Officers, and each of
2 them, was perpetrated upon plaintiff with intent, malice, and without provocation, or in the
3 alternative was done in reckless disregard of Plaintiff's rights. Each and every use of force
4 described herein was without warning to Plaintiff and was objectively unreasonable under the
5 circumstances. Each defendant either personally arrested Plaintiff without reasonable cause, used
6 unreasonable and unnecessary force upon Plaintiff, or authorized, ratified, or contributed to such
7 conduct.

8 15. The conduct herein alleged of Defendants Police Officers, and each of
9 them, was perpetrated upon plaintiff negligently in that said defendants failed to use reasonable
10 care to ensure no excessive force was used on plaintiff. Each and every use of force described
11 herein was without warning to Plaintiff and was objectively unreasonable under the
12 circumstances. Each defendant either personally arrested Plaintiff without reasonable cause, used
13 unreasonable and unnecessary force upon Plaintiff, or authorized, ratified, or contributed to such
14 conduct.

15 16. On information and belief, Defendants and other officers, including Doe
16 Defendants 1-10, have given false statements, filed false police reports, improperly completed
17 Use of Force reports, concealed material information, improperly investigated this matter, and
18 have otherwise attempted to cover-up their and other officers' misconduct, violations of
19 Constitutional rights, and other tortious and unlawful conduct.

20 17. Plaintiff is informed and believes and thereon alleges that the City and
21 County of San Francisco and Doe Defendants 11 through 40, have received numerous complaints
22 and have extensive additional information concerning use of excessive force and other acts of
23 misconduct in violation of the rules and procedures of the City and County of San Francisco, and
24 the rights of the public committed by various City and County of San Francisco Police
25 Department officers, including but not limited to the Defendant Police Officers Phillips, Royer,
26 Territo, and Wood and Police Officer Doe Defendants 1-10.

27 18. Defendant City and County of San Francisco, and Doe Defendants 11
28 through 40, and each of them, by their deliberate acts, reckless conduct, and negligence in failing

- 1 to train, supervise, discipline and/or investigate complaints and/or charges against City and
- 2 County of San Francisco Police Department officers, and/or the defendant police officers and Doe
- 3 Defendants 1-10, proximately caused injuries to Plaintiff.

4 19 Plaintiff is informed and believes and thereon alleges that at all times herein
5 alleged it was the custom and policy of the City and County of San Francisco Police Department,
6 and their members, to use excessive force against citizens, and to violate the rights of disabled
7 persons. This custom and policy is evidenced by the City and County of San Francisco Police
8 Department's failure to train, supervise, discipline and/or investigate complaints and/or charges
9 against City and County of San Francisco Police Department officers who had a known propensity
10 for violence and excessive force and for violating the rights of disabled persons. The acts herein
11 described of Police Officers Phillips, Royer, Territo, and Wood and of the Police Officer Doe
12 Defendants 1-10, and each of them, were in keeping with said custom and policy of use of
13 excessive force.

14 20. On or about August 16, 2007, Plaintiff caused to be personally delivered to
15 the City and County of San Francisco a claim for injuries, losses and damages suffered and
16 incurred by Plaintiff by reason of the above-described occurrences, all in compliance with the
17 requirements of the California Government Code.

18 21. On or about October 5, 2007, the City and County of San Francisco
19 rejected Plaintiff's claim.

V. DAMAGES

21 22. As a direct and proximate result of the acts and omissions of Defendants,
22 and each of them, Plaintiff sustained damages, in an amount to be determined according to proof,
23 including physical injury to his arm, neck, and wrist, severe emotional distress, fear, anxiety,
24 humiliation, loss of personal reputation, embarrassment, medical expenses, loss of income, loss of
25 physical liberty, and the deprivation of his Constitutional rights to be free from unreasonable
26 searches and seizures, and to be free from unreasonable and unnecessary uses of force, as
27 guaranteed by the Fourth Amendment to the United States Constitution.

28 23. Plaintiff has incurred and will continue to incur attorney's fees to vindicate

1 his rights, and thus is entitled to reasonable attorneys' fees according to proof.

2 24. Plaintiff alleges on information and belief that the conduct of the individual
 3 defendants was intentional, reckless and oppressive and was done with the intent of depriving
 4 Plaintiff of his constitutional rights. The acts of the individual defendants, therefore, are such that
 5 punitive damages should be imposed against them in an amount commensurate with the
 6 wrongfulness alleged herein.

7 **VI. JURY DEMAND**

8 25. Plaintiff hereby demands a jury trial in this case.

9 **FIRST CAUSE OF ACTION**

10 (Violations of Civil Rights, 42 U.S.C. § 1983)

11 (Defendants Phillips, Royer, Territo, and Wood, and Does 1-40)

12 26. Plaintiff hereby realleges paragraphs 1 through 25 of this complaint, as
 13 though set forth fully herein.

14 27. As a direct and proximate result of the individual Defendants' actions and
 15 omissions, Plaintiff was deprived of his rights and privileges under the Fourth Amendment and
 16 the Fourteenth Amendment to the United States Constitution, and the laws of the State of
 17 California.

18 28. Defendants subjected Plaintiff to Defendants' wrongful conduct, depriving
 19 Plaintiff of rights described herein, knowingly, maliciously, and/or with conscious and reckless
 20 disregard for whether the rights and safety of Plaintiff would be violated by their acts and/or
 21 omissions.

22 29. As a direct and proximate result of Defendants' acts and/or omissions as set
 23 forth above, Plaintiff sustained injuries and damages as set forth at paragraphs 22 through 24,
 24 above.

25 30. The conduct of Defendants Phillips, Royer, Territo, and Wood, and
 26 Defendants Does 1-10, and each of them, and Does 11-40, entitles Plaintiff to punitive damages
 27 and penalties allowable under 42 U.S.C. § 1983.

28 31. Plaintiff also claims reasonable costs and attorneys' fees under 42 U.S.C. §

1 1983 and as allowed by law.

2 **SECOND CAUSE OF ACTION**

3 (Violation of Civil Rights, 42 U.S.C. § 1983)

4 (Defendants City and County of San Francisco, and Does 41-100)

5 32. Plaintiffs hereby reallege paragraphs 1 through 31 of this complaint, as
though set forth fully herein.

6 33. Defendants City and County of San Francisco, and Doe Defendants 41-100,
7 as a matter of policy, practice and custom, have with deliberate indifference failed to adequately
8 train, instruct, monitor, supervise or otherwise direct its officers and employees, including the
9 individual Defendants herein, concerning the rights of citizens, with deliberate indifference to
10 citizens' and Plaintiff's constitutional rights, which were thereby violated as described above.

11 34. Defendant City and County of San Francisco, and Doe Defendants 41
12 through 100, as a matter of policy, practice and custom, have with deliberate indifference failed to
13 use adequate hiring procedures, thereby resulting in negligent and reckless hiring of the individual
14 defendants, including Defendants Phillips, Royer, Territo, and Wood, and Does 1-10, with
15 deliberate indifference to citizens' and Plaintiff's constitutional rights, which were thereby
16 violated as described above.

17 35. The unconstitutional actions and/or omissions of Defendants Police
18 Officers Phillips, Royer, Territo, and Wood, and Does 1-40, as described above, were ordered,
19 approved, tolerated, authorized, directed, and/or ratified by policy making officers for the City and
20 County of San Francisco, including Doe Defendants 41-100.

21 36. As a direct and proximate result of the unconstitutional actions, omissions,
22 customs, policies practices and procedures of Defendants City and County of San Francisco, and
23 Doe defendants 41-100 as described above, Plaintiff sustained serious, severe and permanent
24 injuries as described in paragraphs 22-24 above.

25 **THIRD CAUSE OF ACTION**

26 (Violations of California Civil Code § 51.7)

27 (Defendants Police Officers Phillips, Royer, Territo, and Wood)

28 37. Plaintiffs hereby reallege paragraphs 1 through 40 of this complaint, as
though set forth fully herein.

1 38. In doing the things herein alleged, Defendants Police Officers Phillips,
2 Royer, Territo, and Wood used, or ratified the use of, violence and intimidation by the threat of
3 violence against Plaintiff because of his sexual orientation and/or because of his apparent sexual
4 orientation.

5 39. As a proximate result of Defendants Police Officers Phillips, Royer,
6 Territo, and Wood's wrongful conduct, Plaintiff suffered damages.

7 40. The aforementioned acts of Defendants Police Officers Phillips, Royer,
8 Territo, and Wood were wilful and intentional, and justifies an award of actual damages, punitive
9 damages up to three times actual damages, a civil penalty of \$10,000, and attorneys' fees
10 pursuant to California Civil Code § 52(b).

11 42. Defendants Police Officers Phillips, Royer, Territo, and Wood, and each of
12 them, by committing violence against Plaintiff, placed Plaintiff in immediate fear of great bodily
13 harm. Plaintiff did not consent to such violent and offensive acts and contact by these defendants.

FOURTH CAUSE OF ACTION

(Assault)

(Defendants Police Officers Phillips, Royer, Territo, and Wood)

16 41. Plaintiffs hereby reallege paragraphs 1 through 40 of this complaint, as
17 though set forth fully herein.

18 42. Defendants Police Officers Phillips, Royer, Territo, and Wood, and each of
19 them, by committing violence against Plaintiff, placed Plaintiff in immediate fear of great bodily
20 harm. Plaintiff did not consent to such violent and offensive acts and contact by these defendants.

21 43. As a proximate result of Defendants Police Officers Phillips, Royer,
22 Territo, and Wood's intentional and wrongful conduct, Plaintiff suffered damages.

FIFTH CAUSE OF ACTION

(Battery)

(Defendants Police Officers Phillips, Royer, Territo, and Wood)

25 44. Plaintiff hereby realleges paragraphs 1 through 43 of this complaint, as
26 though set forth fully herein.

27 45. Defendants Police Officers Phillips, Royer, Territo, and Wood, and each of
28 them, by committing violence against Plaintiff, intentionally caused offensive contact with

1 Plaintiff 's person. Plaintiff did not consent to such violent and offensive acts and contact by
2 Defendants Police Officers Phillips, Royer, Territo, and Wood, and each of them.

3 46. As a proximate result of Defendants Police Officers Phillips, Royer,
4 Territo, and Wood's, and each of their, intentional and wrongful conduct, Plaintiff suffered
5 damages.

SIXTH CAUSE OF ACTION

(Negligence)

(Defendants Police Officers Phillips, Royer, Territo, and Wood)

8 47. Plaintiff hereby realleges paragraphs 1 through 46 of this complaint as
9 though fully set forth herein.

10 48. At all times mentioned herein, defendants, and each of them, were subject
11 to a duty of care to avoid causing unnecessary physical harm and distress to other persons. By
12 taking the actions described above, defendants acted negligently and without due care.

13 49. Plaintiff's injuries were proximately caused by the negligent and wrongful
14 acts or omissions of Defendants Police Officers Phillips, Royer, Territo, and Wood, and each of
15 them, as they used violent and excessive force against Plaintiff. Defendants Police Officers
16 Phillips, Royer, Territo, and Wood, and each of them, committed those acts while employed by
17 Defendant City and County of San Francisco and acting within the scope of their employment.

18 60. As a proximate result of defendants' negligent and wrongful conduct
19 herein described, plaintiff suffered damages.

WHEREFORE Plaintiff prays for judgment as follows:

1 \$25,000, and attorneys fees pursuant to California Civil Code § 52(b);

2 6. For such other and further relief and damages as the Court may deem just
3 and proper.

4 DATED: March 26, 2008

5 Respectfully submitted,
6 HELBRAUN LAW FIRM

7 DAVID M. HELBRAUN
8 Attorneys for Plaintiff
9 THOMAS JOSEPH BARNES